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No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____,
Appellant

On Appeal from the Supreme Court of Missouri

BRIEF OF ARNOLD T. PHILLIPS, JR., AMICUS CURIAE

LEWIS C. GREEN
GREEN, HENNINGS & HENRY
314 N. Broadway, Suite 1830
St. Louis, Missouri 63102
231-4181
Attorneys for Arnold T. Phillips, Jr., Amicus Curiae

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Statement of Interest of Amicus Curiae	1
Summary of Argument	4
Argument	4
Conclusion	5

TABLE OF AUTHORITIES

Cases

In re Arnold T. Phillips, Jr., # 62278, Supreme Court of Missouri	1
In re R_____ M. J_____, # 61894, Supreme Court of Missouri	1,2
Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, U.S. , , 100 S. Ct. 2343, 2351 (1980)	4
Bates v. State Bar of Arizona, 433 U.S. 350, 381-82, 385 (1977)	4

Constitution

United States Constitution, First and Fourteenth Amendments	4

Court Rule

Missouri Supreme Court Rule 4, DR 2-101(B)	4

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STATEMENT OF INTEREST OF AMICUS CURIAE

Appellant and respondents, by counsel of record, have consented in writing to the filing of this brief.

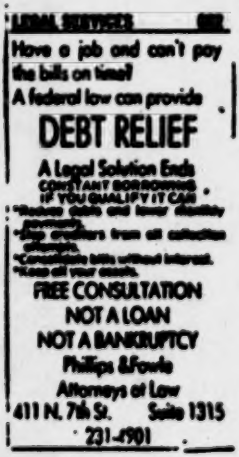
Arnold T. Phillips, Jr. (hereinafter referred to as amicus Phillips) is a member of the Missouri Bar, practicing in St. Louis, Missouri. He is the respondent in a disciplinary proceeding pending before The Advisory Committee (informants in the R_____ M. J_____ proceeding below), on account of certain advertisements which he has caused to be published, including the advertisement set forth below. That proceeding has been suspended by order of the Supreme Court of Missouri dated October 3, 1980, in Cause No. 62278, pending the disposi-

tion of *In re* R_____ M. J_____, No. 61894 in that court. If the decision below is not reversed, the stay will expire, and The Advisory Committee will resume its disciplinary proceeding against amicus Phillips.

Amicus Phillips filed briefs amicus curiae in the R_____ M. J_____ proceeding below, and through counsel participated in the oral argument.

At the invitation of the Supreme Court of Missouri, amicus Phillips and The Advisory Committee entered into a stipulation of relevant facts, which was filed in the Supreme Court of Missouri as a part of the R_____ M. J_____ proceeding. The following facts are excerpted from that stipulation.

From February to July, 1980 amicus Phillips, together with his then partner, published the following advertisement in the St. Louis Globe-Democrat, a newspaper circulated throughout the St. Louis metropolitan area in both Missouri and Illinois, on a number of occasions.


LEGAL SERVICES
Have a job and can't pay the bills on time?
A federal law can provide
DEBT RELIEF
A Legal Solution Ends
CONSULTANT BORROWING
IF YOU QUALIFY IT CAN
FREE CONSULTATION
NOT A LOAN
NOT A BANKRUPTCY
Phillips & Fowle
Attorneys at Law
411 N. 7th St. Suite 1315
231-4901

If called to testify at a formal hearing before The Advisory Committee, a bankruptcy expert would testify that Chapter 13 of the new Bankruptcy Code adopted in 1978, effective October

1, 1979, entitled "Adjustment of Debts of an Individual with Regular Income," makes available to an individual debtor, under specified circumstances, a proceeding which is not a "bankruptcy" as that term has been commonly used in the past, or as the term is commonly understood by laymen. Pursuant to Chapter 13, the individual debtor may file a plan to provide for the submission of all or a part of his future earnings or income to the supervision or control of the trustee, provide for the full payment of all claims entitled to priority under 11 U.S.C. § 507, and provide for the payment of all or part of the debts of the debtor over a period of not longer than three years, unless the court for cause approves a period up to a maximum of five years. 11 U.S.C. § 1322. In many respects the proceeding differs from a Chapter 7 bankruptcy and a Chapter 11 reorganizaton, and is greatly preferred by the individual debtor. In the opinion of the bankruptcy expert, the advertisement set forth above is not misleading in any way.

Various clients or former clients of amicus Phillips and his former partner, if called to testify, would testify that they were persons who had been in financial straits, but did not want to go through bankruptcy, and were not aware of any other solution to their problems. At least four of them had in fact talked to other lawyers previously, but those lawyers could suggest nothing but bankruptcy. Other such clients knew of no lawyers, and did not know where to get help. Most had been greatly upset by their credit problems and harassment by creditors, and found great emotional and psychological relief as a result of this advertisement. Many have been able to stop going to the doctor and taking tranquilizers or other medication. The advertisement, leading in each instance to the filing of a debt adjustment plan, ultimately enabled one such client to get married, and enabled all to avoid foreclosure of home, automobile, or other assets. All are very grateful to amicus Phillips and his former partner, and feel that the advertisement was a major turning point in their lives.

SUMMARY OF ARGUMENT

Missouri Supreme Court Rule DR 2-101(B), in prohibiting all communications other than those specified in the Addendum, prohibits lawyers from communicating to laymen information and ideas of great value to the laymen, in violation of the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

Missouri Rule DR 2-101(B), as interpreted by The Advisory Committee, and the Missouri Supreme Court, is clearly unconstitutional. It prohibits all communications other than those specified in the Rule and the Addendum. It is unquestionably "more extensive than is necessary to serve" the governmental interest asserted. *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York*, ___ U.S. ___, ___, 100 S. Ct. 2343, 2351 (June 20, 1980). Indeed, the Rule would prohibit the very advertisement which this Court held protected in *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 381-82, 385, for at least seven separate and independent violations of the Rule. The Supreme Court of Missouri did not even attempt to justify the Rule under the criteria established by this Court.

The Rule is being used by The Advisory Committee, with the endorsement and support of the Supreme Court of Missouri, to inhibit and prevent the free communication of ideas in Missouri, in flagrant violation of the First and Fourteenth Amendments. As the stipulated facts show, amicus Phillips, by his advertisements, is informing individual debtors (laymen, and in some cases laymen of limited education) of the availability of a new remedy created by the United States Congress. In so doing, he is furthering the congressional purpose of the new legislation, and exercising a fundamental right guaranteed by the First and Fourteenth Amendments.

The effect of this Rule, implemented by the disciplinary proceedings of The Advisory Committee, as endorsed by the Missouri Supreme Court, is substantially to inhibit the free flow of information in Missouri. In the absence of even a superficial effort by the Missouri Supreme Court to justify this inhibition, the decision below should be summarily reversed.

CONCLUSION

This Court should accept jurisdiction and summarily reverse the decision below. In the alternative, this Court should set the case for oral argument.

Respectfully submitted,

LEWIS C. GREEN
GREEN, HENNINGS & HENRY
314 N. Broadway, Suite 1830
St. Louis, Missouri 63102
(314) 231-4181

Attorneys for Arnold T. Phillips, Jr., Amicus Curiae

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